COMMONWEALTH OF KENTUCKY
LAWRENCE CIRCUIT COURT
DIVISION NO. II
ACTION NO. 97-CI-00264

COPY

EASTERN CRANE, INC.

PLAINTIFF

VS: DISCOVERY DEPOSITION ON BEHALF OF PLAINTIFF, OF THE WITNESS:

STEVE PORTER

KENTUCKY POWER COMPANY
and MITCH THOMAS

****

The DISCOVERY DEPOSITION ON BEHALF OF PLAINTIFF, OF THE WITNESS, STEVE PORTER, was taken before Anne Lewis, Notary Public, in and for the State of Kentucky at Large, on August 5, 1999, at the offices of Hon. Wendell Roberts, 1505 Carter Avenue, Suite 200, Ashland, Kentucky, commencing at the approximate hour of 1:00 p.m.

Said deposition was taken pursuant to Notice, to be used for the purpose of evidence on behalf of the Plaintiff at the trial of the above-styled action and for any and all purposes permitted by the Rules of Civil Procedure.

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APPEARANCES

FOR PLAINTIFF

HON. MARRS ALLEN MAY
P.O. BOX 1465
PIKEVILLE, KY 41502

FOR DEFENDANTS

HON. WENDELL S. ROBERTS
P.O. BOX 70
ASHLAND, KENTUCKY 41105-0070

HON. ANTHONY J. SWANECK
1 RIVERSIDE PLAZA
COLUMBUS, OHIO 43215-2373

I.N.D.E.X.

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WITNESS:

STEVE PORTER

CROSS-EXAMINATION
By Mr. May 4-62

CERTIFICATE 63

THEREUPON, THE WITNESS, STEVE PORTER, BEING DULY SWORN, TESTIFIED AS FOLLOWS, TO-WIT:

CROSS-EXAMINATION

BY MR. MAY:

Q. 1 State your name, please.

A. Steve Porter.

Q. 2 Where do you live, Mr. Porter?

A. I live in Cattletsburg, Kentucky.

Q. 3 Mr. Porter, I'm Marrs Allen May, and, of course, I'm going to be asking you some questions here. And when I ask you a question that I don't make clear and you don't understand, please just tell me and I'll try to rephrase it so you can understand it. This will be completely informal. Any time you want to stop and ask your attorney a question, please feel free to do so. Are you a native of this area, Steve?

A. Yes.

Q. 4 Where were you born?

A. Well, when I say "native," I've lived in this area since '72, so pretty much all my life.

Q. 5 The reason I ask that is for jury

selection purposes. Do you have any relatives in Lawrence County, Kentucky?

A. Not to my knowledge.

Q. 6 Steve, if you would, and you can do it briefly in summary fashion, would you give me your educational background and your work background?

A. Well, I went to Boyd County High School, graduated in '81. From there, I proceeded to college. I graduated from the University of Kentucky in 1988 as an electrical engineer. From that point, I had a job with an electrical contractor consultant for one year. November 16th of '89, I went to work for Kentucky Power Company as an engineer.

Q. 7 November--

A. '89.

Q. 8 Now, you say you went to work for AEP as an engineer.

MR. ROBERTS: I think he said Kentucky Power.

A. Kentucky Power.

Q. 9 I'm sorry. Kentucky Power. Okay. I assume it later became or it's a part of AEP?

A. It's a part of AEP.

Q. 10 When you say you were an engineer from Kentucky Power, would you tell me exactly what your responsibilities and duties were, what you dealt with?

A. Basically, it's a wide variety of everything, from supervising men on the job to brief projects, installation of equipment, design equipment--or, not really design, but small--small scale stuff as far as put a pump here or a motor here, that sort of thing. But other than that, I guess--a little bit of different areas. I mean it wasn't all pure engineering, if you will. It was supervision and so forth.

Q. 11 Has your position changed from the beginning of your employment in '89 until present?

A. Has it changed? Just in title. I mean as far as the ranks of engineer or progression--or promotion.

Q. 12 What is your title presently?

A. Presently? Plant engineer Two.

Q. 13 In 1993, what would it have been?

A. In '93, I'm trying to remember here. It was probably at that time called a performance engineer. As they restructured, they renamed, and that's why the names have changed over the--over

the years, just from AEP trying to get everybody a consistent name across the system, is what it amounted to.

Q. 14 The name changed but no difference in the duties?

A. Right. There you go.

Q. 15 I note that it's plant engineer Number Two. Does that indicate that there's a plant engineer Number One that would be above you?

A. Yes, sir.

Q. 16 And who would that be?

A. There's two or three of them there at the plant.

Q. 17 Would you name those persons for me?

A. Let's see. Ken Borders, I believe, is considered a plant One. I'm trying to think. James Burton, I believe, is a plant One. And this is to the best of my knowledge. I'm not sure how the promotions and so forth have been lately. We just went through another title change, so that's why I'm--I'm trying to recall what positions people are in. I know those two are, but I'm not sure of the titles on a couple of the others.

Q. 18 In going through this material here, I've noticed the name of James Burton before.

Would he have been the engineer that would have been over you in connection with the work that Mr. Lequire's company performed?

A. No, sir.

Q. 19 Who would it be, then?

A. Who would it be? Well, as far as it goes, your ranks of engineer--the lower ranks of engineers do not report to a higher rank engineer, if you will. We have a supervisor who we would directly report to.

Q. 20 I don't have right at my hand now, but I am almost sure that I have seen the name of James Burton or his signature upon documents in this material that I've gone through. Can you tell me why, if I am right, that his name would be there?

A. I would have no idea on this particular thing here.

Q. 21 So he didn't perform or have any connection whatsoever with the work that Mr. Lequire was doing?

A. On this particular pond cleaning here, I don't recall him having involvement--

Q. 22 Any connection with it. Okay. You were working there, then, at the plant in 1999,

when Mr. Lequire's company first did some work for the company. Is that right?

A. '99?

Q. 23 I'm sorry. '90. If I said '99, I apologize. '90.

A. I was at the plant, yes, sir.

Q. 24 Did you have any connection or supervision whatsoever in regard to the work that Mr. Lequire performed in 1990?

A. To the best of my memory, I think there was one instance on the coal yard runoff ponds, possibly. I'd have to look. To the best of my memory--but other than that, that was it.

Q. 25 So it would be merely incidental if you did have any connection with any work he did in 1990?

A. Well, like I said, it seems like the coal yard runoff ponds was done in December of '90, I believe. If that--I'm not certain. That would have been the only time.

Q. 26 Now, would your responsibilities and duties encompass the settling pond areas or the pond areas?

MR. ROBERTS: Back in '93?

Q. 27 In '93.

A. In 1993? At that time I was basically in charge of our fly ash dam project, which utilizes the ash out of the bottom ponds to build the elevation of the fly ash dam. So at that time I would have some relation to these ponds, yes.

Q. 28 Now, you're talking about the fly ash dam. Would you tell me what that is?

A. A fly ash dam is--when you burn coal, you get two products. You get a bottom ash, which is heavy stuff that falls to the bottom of your boiler, and then you get a fly ash, which is light stuff that gets carried out through the flue gas system. We collect the fly ash and mix it in a slurry and then pump it over--we've got a pond adjacent to the plant over across in front of the plant that we pump this slurry to in a--in a holding pond.

Q. 29 Now, I've taken the deposition of Mr. England, and Mr. England has tried to describe the setup of the ponds there to me. And, as I understand it, and you correct me, Mr. Porter, if I've misstated anything, that at the upper end are two ponds; one which is referred to as the north pond and one which is referred to as the south

pond. Below those two ponds are two ponds which are referred to as the settling ponds. Then, below these two settling ponds is a pond that is referred to as the recirculating pond. Is that a fair characterization?

A. Yes, sir. There are two ponds in the front which are the bottom ash which we refer to as the north and the south, because one is physically north of the other one, and then you have your two middle ponds that are directly connected next to those, which are the settling ponds, which are the settling ponds which are a north and a south, and then a common recirculating pond.

Q. 30 And as I drive by on U.S. Highway 23, those are the ponds immediately adjacent to the highway there, aren't they?

A. Yes.

Q. 31 And I would assume that the one that is closest to the highway would be the north pond and the one toward--on the river side would be the south pond?

A. With respect to the plant, yes.

Q. 32 Now, it's further my understanding from Mr. England that the material comes out of

the burners, goes to either the north or the south pond where the primarily heavy stuff settles out, that then the lighter stuff is let out into the two settling ponds where, again, there is a settling process, and then the--probably at that point, I guess, mostly just water is run into the recirculating pond where it is collected and then either used again in the plant or taken and disposed of somewhere?

A. The front ponds are what we call the bottom ash ponds, is the first ponds that the ash will discharge into, depending on how they have it set up as to whether it dumps in the north pond or the south pond. Hopefully, all your material will settle out in those two ponds. However, some of the fine stuff will migrate with the water into the middle settling ponds, and, like you say, by the time it gets to the recirc pond, we hope it's pure, clear water.

Q. 33 Hopefully, it's just water. Now, as I also understand it, that periodically it's necessary to clean those ponds and the system, as I understand it, is--if they want to clean the north pond, they put everything in the south pond and reverse when they want to change, and when

they would put everything in the south pond, they would clean out the north pond. Is that right?

A. When they switch from one pond to the other, they--they de-water or let the water out to where--this is only in the front two bottom ash--what we call the bottom ash, front two. At that point, the water will drain to where we can get our heavy equipment in to excavate and clean it.

Q. 34 And take out the heavy ash that has settled out there. Then, apparently, periodically it's necessary to clean out the two settling ponds and the recirculating ponds.

A. In the time period I've been there, this was the first that it had happened, so I--as far as the past and previous stuff, other than records, that would be the only way I'd know.

Q. 35 So this was the first occasion you were ever aware of that they had cleaned out the settling ponds and the recirculating ponds?

A. We--we had heard that they sometime previous had done it, but it was a different method, but I had no--like I say, this is the first time I had ever been involved, to my knowledge, as far as it being cleaned.

Q. 36 When was the determination made to clean out these settling ponds?

A. When was it made? We--the initial contract there or whatever, the quotes, which I believe was in February or somewhere in that time frame.

Q. 37 Okay. If it will help you, I note that Mr. Lequire's bid was dated February the 8th, 1993. I would assume that, since he quotes a figure of 26,000 cubic yards of fly ash that he proposes to remove, that sometime prior to February the 8th, 1993, some determination was made as to the amount of fly ash that would be needed to remove. Is that true?

A. Yes.

Q. 38 Now, since we have a figure of 26,000 cubic yards, I assume that was the figure that was presented to the prospective bidders for the removal of that material?

A. Yes.

Q. 39 Do you know how that 26,000 cubic yard figure was determined?

A. Yes. Our AEP lab, our civil lab, came previous to that, and I'm not sure of the exact dates. The dates are somewhere on the

papers. But they did a survey to determine how--the level of the ash in the pond from the original drawings of the pond and so forth, they do a--this is all my understanding. They do a--what do you call it--topographic map or whatever, that tells you the elevation change from the original pond structure. He determined that--in two methods--when I say "two methods," two volumes. One was with slope sights, given the natural contour of the pond which gave a figure, I think, of 23 something or other, and then he also squared the sides off, given the fact that basically your dredge would be cutting squares. You can't follow contours over the time when--or whatever the contour, so he came up with another figure of like 29, and, therefore, we just, for estimation purposes, selected a happy medium of 26.

Q. 40 As I understand it, then, you--or they--did you assist them in making these determinations?

A. No.

Q. 41 As you understood it, what they did, then, was, they took the original drawings of the pond and there must have been some type of elevations on them or something. They took that

and they must have, in some way, determined how much material was above the original elevations. How did they do that?

A. It's my understanding--like I said, I did not see the original survey. The after survey, when they did it, they performed it using a surveyor's level with a level rod and some kind of ultrasonic device to determine what the bottom elevation physically looks like, as well. But they took rod readings throughout, as well.

Q. 42 So they actually measured with a rod?

A. Yes.

Q. 43 Did you observe them doing that?

A. Not on the initial, I can't say I did, no.

Q. 44 I believe Mr. Thomas, when he testified, stated that, in fact, the device they used was the common ordinary fish finder thing that fishermen use. Is that right?

A. Honestly, I wouldn't know.

Q. 45 Okay. You don't know what it was, then?

A. No, sir.

Q. 46 They made, then, two determinations

using what would be a slope of the sides of the pond, and then one where they would go directly straight down on the sides of the pond. Is that right?

A. Yes, sir.

Q. 47 Now, what was the sloped side determination? You told me and I just didn't put it down.

A. There should be a paper there. I'm not sure what it was. It was 23--23,000 and something.

MR. MAY: I don't believe we have a copy of that paper, Wendell. Do we?

MR. ROBERTS: I don't think so. Let me give it to you, then.

Q. 48 I'll present you a document that your attorney has just furnished me, and ask you if that was what you were supplied with or saw?

A. Yes, they--they gave me this at the time.

MR. MAY: May we introduce that as Exhibit One to your deposition.

Q. 49 Now, as I understand it, then, you took the average of those two and arrived at the 26,000 figure?

A. Approximately the average, yes.

Q. 50 It's my understanding from both Mr. England and Mr. Thomas that you then or someone contacted three potential construction companies in regard to this removal, one of which was Mr. Lequire's company, one of which was Trans-Ash, and the third one I can't remember. Is that true?

A. Yes, sir.

Q. 51 Who contacted those companies?

A. Myself.

Q. 52 How did you do that?

A. By telephone.

Q. 53 So there was never any written communication with them prior to they submitting bids?

A. No, sir.

Q. 54 How were these three companies determined as potential bidders?

A. Mr. Lequire's company had done other previous work in there for other people in the plant, and they liked his work and so forth, so they wanted him to have the opportunity to bid this. As far as Trans-Ash, they were the company that had the contract on the front two ponds that we clean out regularly for our fly ash dam, so we

thought it fair to let them bid this work as well. The third company, I believe, was--the third company, I believe, was Brand, who did not quote because they didn't have the equipment to do so, and they were primarily just--we try to maintain or get three bids on jobs of this nature or jobs of this size, if you will.

Q. 55 Did you then specify the equipment they would need to do this job?

A. We told them at that time we wanted to try to do this with a dredge simply for the fact that the fines in the pond were too fine to be--to try to truck without the mess because it would make a--we figured it would make a substantial mess on the roadway.

Q. 56 Now, I have a document here, which it's a letter from Mr. Lequire addressed to you. I will ask you if you recognize that document.

MR. ROBERTS: Can I look at it?

MR. MAY: Sure. I'm sorry.

MR. ROBERTS: February 8, '93. Okay.

A. Yes, sir.

Q. 57 In that document, it sets out a list of equipment that will be provided. Did you examine that?

A. Just from what's on this list here.
Q. 58 And did you feel that that was capable of performing the work that was to be performed?
A. To my knowledge, I know no different. I mean, we take him to be the expert on the equipment.
Q. 59 Are you an engineer?
A. I'm an electrical engineer; yes, sir.
Q. 60 Okay. And did you all approve that bid, then?
A. Based on this right here, yes. He was--he was low bidder.
Q. 61 Were you the person that was in charge of this project in regard to determining what needed to be done and how it was to be done?
A. Primarily, I would say no. There was a Labowie from our AEP headquarters who had the original survey done. They were our ash management people.
Q. 62 Would they have determined what equipment was needed, then?
A. No.
Q. 63 Someone must have determined that

because, as I recall, Mr. Thomas testified that one of them was--that they didn't provide the necessary equipment.

A. Excuse me?

MR. ROBERTS: Objection. I don't recall that.

MR. MAY: Okay. Maybe I'm mistaken then.

Q. 64 Someone must have made a determination that these people had the necessary equipment.

A. "These people" being--?

Q. 65 Mr. Lequire.

A. Mr. Lequire? When we got our bids, we explained to them that we wanted to move this material with a dredge, and at that point, they were the experts that do this stuff all the time, so it was basically left to their determination to decide if their equipment was good enough. If it was not, he should not have bid.

Q. 66 Why would Mr. Lequire have listed the equipment he was going to use if he were not required to have certain specific equipment?

MR. ROBERTS: Objection. But go ahead.

MR. MAY: Go ahead.

MR. ROBERTS: You can go ahead and answer.

A. Go ahead? Because as I was stating, this is the first time that we had ever cleaned these ponds utilizing a dredge. To be honest, we did not know what we were up against--I did not know what we were up against. So when we explained this to them that we wanted to clean it by a dredge, we wanted to see basically how they planned on doing it so we can compare apples to apples. You know, it's not fair for one guy to bring in one piece of equipment and another guy not, and their bids be totally off.

Q. 67 So you compared, then, and felt that Mr. Lequire's proposal was the best?

A. His proposal was the cheapest.

Q. 68 But as I recall, you told me that you made a determination that the equipment was adequate.

A. I never stated that; no, sir.

Q. 69 Okay. I'm sorry. Okay. Let me rephrase it then. In deciding between Mr. Lequire's bid, Trans-Ash's bid, or--and if someone else bid, someone had to make a determination that

this equipment was sufficient, didn't they?

MR. ROBERTS: Objection. Asked and answered.

A. We assumed--like I said before, we assume that they are the expert and know what their equipment's capability is. Otherwise, like I say, that's why we--

Q. 70 So if Trans-Ash had said, "We're going to take in a hand pump and a wheel barrow," you would have assumed they knew what they were doing, and they said, "We can do it for this amount," it wouldn't have made any difference to you?

A. Given your example there I think is a little--little--

Q. 71 Well, I'm trying to draw a picture there that I hope would point out to you someone had to look at this list of equipment to make some determination as to whether bids were equal.

A. As far as the method goes, was what we were interested in was to make sure it was not going to be trucked out to make a mess. From that point, like I said, we leave it up to the experts to decide, you know.

Q. 72 So you did not request in your

telephone conversation with Mr. Lequire and the Trans-Ash company that they list the proposed equipment, because that made no difference to you?

A. I don't recall.

Q. 73 You may have done that, mightn't you, Mr. Porter?

A. I don't recall. Every bid that he has ever turned in on any job, even outside of this, he's always listed his equipment on it, so I don't recall.

Q. 74 Do you recall whether Trans-Ash listed the equipment they were going to use?

A. Not right off, I don't.

Q. 75 Have you got a copy of their bid still in your records?

A. Should have; yes, sir.

Q. 76 Let me present a document to you dated February the 4th, 1993 from Trans-Ash and ask you if that's what you received from Trans-Ash.

A. Yes, sir.

Q. 77 I notice in this it says, "The ash will be discharged into the primary bottom ash ponds." What did they mean by that? Let me see if I can help you. Did that not mean they were

talking about pumping it back into the north or south pond?

A. Yes, sir. The north or south bottom ash pond.

Q. 78 And it says, "Alternatively, a boost pump may be tied into an existing ash line at the bottom ash ponds and the dredge fines discharged directly to the fly ash pond." Were they referring there to an existing pipeline?

A. Yes, sir.

Q. 79 But the primary plan, then, apparently--or am I mistaken--of Trans-Ash was to pump it back into the north or south pond?

A. No, sir. They quoted it both ways, but our choice was, if we put it in the bottom ash ponds up front, we would have to end up trucking it, which we did not want to do, so we wanted to discharge it to the fly ash pond over the hill, which is their alternative method there.

Q. 80 Okay. Let me ask you. In your telephone conversations with both Trans-Ash and Mr. Lequire's company, did you tell them that the primary method would be the bottom ash--pumping it into the bottom ash ponds and, alternatively, into the ash line?

A. I don't recall. Their bid is dated first. It may have been that we gave them the alternative at first before we got Mr. Lequire's bid.

Q. 81 So it may have been, then, that they were acting and responding to the request of Kentucky Power Company when they proposed first to pump it into the north pond and then, alternatively, into an existing line that would take it to the fly ash disposal place?

MR. ROBERTS: Objection to the extent--I mean, you can ask him what his understanding of what their intentions were, but as far as knowing their intentions, I don't know if he's in a position to know that. Subject to that, go ahead.

MR. MAY: Well, go ahead.

A. Will you ask again there?

Q. 82 Okay. Let me see if I can rephrase it and make it better. I would assume that Trans-Ash would not have responded in this method unless this had been the methods outlined to them in making their proposal.

MR. ROBERTS: Show my objection. Go ahead to the extent that you can--

A. I guess you could assume that, since they have both methods here.

MR. MAY: Let us introduce that as Exhibit Number Two to the deposition.

Q. 83 Now, a determination having been made that Mr. Lequire's bid would be accepted, was there some decision made as to the method Mr. Lequire would do it?

A. Would you say that again, please?

Q. 84 Okay. Let me see if I can help you and maybe suggest what I'm getting to, because I'm not trying to trap you, Mr. Porter. It is my understanding, for some reason when Mr. Lequire started, it was determined that he would first try to pump it into the existing line--

A. Yes, sir.

Q. 85 --to dispose of it.

A. Yes, sir.

Q. 86 Who made that determination?

A. It would have been a--probably a collective agreement in the plant there.

Q. 87 Now, when we say "a collective agreement," are we talking about yourself, Mr. England, Mr. Thomas and someone else or who?

A. At this time, I would--I would be

uncertain to say everyone that could potentially be involved there.

Q. 88 Okay. In fact, you had your doubts about that, didn't you?

A. About?

Q. 89 The ability to pump it into this line?

A. I wouldn't say that.

Q. 90 Well, did you determine that it was impractical to do this?

A. No, sir. We--as a matter of fact, the plant, at our own expense, put a tap in the line to do that.

Q. 91 But I'm saying that when this was tried, did it not work?

A. There was material being moved.

Q. 92 But it wasn't working, was it?

A. It appeared not to be.

Q. 93 And, in fact, you and Mr. Lequire had discussed this and tried to tell the other engineers it wouldn't work and they were being stubborn for a while before they finally conceded it wouldn't work. Isn't that true?

A. I won't say all that.

Q. 94 Well, then part of that. Okay?

Would that be a fair statement, Mr. Porter, that, in fact, you and Mr. Lequire had tried it and discussed it and determined that wouldn't work?

A. I think the problem was in the booster pump was not big enough.

Q. 95 Okay. But it wasn't working?

A. I'd say that would be safe to say.

Q. 96 At that point or prior to that, let me ask you if this contributed to the problem in getting it to work. Was there not an occasion where, as I understand it, a valve was left open which allowed some of the heavy material from the north pond to come down into the settling ponds?

A. That--there was an occasion when that happened, at which time we put in an extra work order from him to remove those fines, because we were afraid of blocking the line with these fines, yes.

Q. 97 So I believe I've got Mr. England and Mr. Thomas to already concede it. It would affect the ability to pump this material out if, in fact, this heavy ash were allowed to come down into the settling ponds, would it not?

A. Will you repeat that again?

Q. 98 Okay. Would it not affect the

- Steve Porter's

ability to pump out this material in the settling ponds, which was primarily light stuff, if, in fact, some of the heavy material from the north pond was allowed to go into the settling ponds?

A. I would not know because I do not know the properties of this dredge. I mean, they use dredges to clean mud out of rivers.

Q. 99 Okay. But would it be harder? Now, that's a simple question, Mr. Porter. Would it be harder to move light stuff or heavy stuff?

A. Would it be harder to move heavy stuff versus light stuff? I could probably say, yes, it would, but the small amount that was moved or that was there, I don't know how it would affect.

Q. 100 Okay. But whatever amount it is, to that extent, it would make it harder?

A. Like I said, not knowing the properties of the dredge, I couldn't say that.

Q. 101 Any dredge?

A. Well, like I said, they--they dredge rivers every day.

Q. 102 Okay. But it would make it harder. Now, Mr. Porter, that's a simple question and you know that it would, wouldn't it?

MR. ROBERTS: Asked and answered.

Q. 103 Would it? You don't know.

A. I--I couldn't say for sure, no. I mean, it would make sense, yes, but I--I can't sit here and say yes.

Q. 104 I've been handed an interesting document here, Mr. Porter. I want you to look at it and see if you recognize it and see if that's your own document that you produced.

MR. ROBERTS: What's the date on it?

MR. MAY: March. March work order.

A. Yes, sir, I recognize that.

Q. 105 Is that your document?

A. It is one that I submitted; yes, sir.

Q. 106 Now, I want to read from that document. "After Eastern Crane was awarded contract, heavy bottom ash was washed into the contracted ponds. This ash could not be removed by dredge." Did you write that?

A. I obviously did; yes, sir.

MR. MAY: Let's introduce this as Exhibit Three. Let me introduce the letter from Mr. Lequire, dated February 8th, 1993 as Exhibit Number Four.

MR. ROBERTS: Do you mind if we take about two minutes at this point?

MR. MAY: Sure.

(SHORT RECESS).

Q. 107 Mr. Porter, I believe you want to clarify something that you previously stated?

A. Yes, sir, I would.

Q. 108 Go right ahead.

A. On the last article which you gave me, on this extra work authorization, this particular document here is--is typed up in our clerical department. There is a cover letter previous to that which I submitted to have this performed, this--this extra work authorization typed up, which are my words, and if you'll look in the second paragraph, it says, "These heavy fines washed through pose a possible problem of stopping up the line used in the dredging process." I don't recall in here that it would stop up and could not be pumped.

Q. 109 So whoever typed that up, then, just typed it up wrong?

A. Would have summarized or whatever; yes, sir.

Q. 110 And who would that have been?

A. Someone in our accounting department.

MR. MAY: Let me see that document.

Q. 111 And, again, you'll have to excuse me because my copy doesn't have all of it on it, but I notice your name, Steve H. Porter, there. What does that word say beside of it?

A. "Initiator."

Q. 112 That means that you were the one that--

A. I'm the one that prompted it, yes.

Q. 113 And I notice "Approval, M.H. Thomas," who is Mitch Thomas. Is that right?

A. Yes, sir.

Q. 114 Now, let's get back to our pump. In fact, you and Mr. Lequire were working together trying to solve this problem, and Mr. Lequire, in fact, blew up six different pumps trying to pump it through this line, didn't he?

A. I could not confirm that; no, sir, I can't.

Q. 115 So you don't know whether he blew up any pumps or not?

A. I do recall one.

Q. 116 You don't know whether there were

more than one?

A. No, sir.

Q. 117 Do you remember going with Mr. Lequire to Mr. England and telling him what was happening, that the pumps were blowing up and you were going to have to look for another method of disposing of this material?

A. I recall that conversation, yes.

Q. 118 That did happen, didn't it?

A. Yes.

Q. 119 And you joined with Mr. Lequire in saying it wouldn't work, "We're going to have to try something else," didn't you?

A. I can't--I'm unsure of that. I recall the problems that we were having at that time.

Q. 120 In fact, Mr. Lequire expended quite a bit of money trying to get it to work, didn't he?

A. I would have no idea.

Q. 121 Was a determination then made that to dispose of the material, a temporary dam would be built up in the north pond dividing it into two sections; the material taken out of the settling pond would be pumped into the upper portion of the

north pond behind the dividing dam to segregate the material that was being pumped from the settling ponds into the north pond; the material being pumped from the settlement ponds being placed in the upper portion of the north pond?

A. Yes, sir, there was a--there was a dam or a dike built, yes.

Q. 122 And the purpose of doing that was to prevent the contamination of the lower portion of the pond with this material that was being pumped out of the settling ponds which was more watery, I guess would be a good word, than the heavy material. Is that right?

A. The purpose was to pump the material into this holding area and let the water drain out of it.

Q. 123 And there must have been some purpose to have put the dam there or you wouldn't have put a dam there.

A. Yes, sir.

Q. 124 And what was the purpose?

A. To hold these pumpings back to where the water would run out of them, yes.

Q. 125 And you didn't want this material to contaminate the whole north pond, did you?

A. We did not want it back in there; yes.

Q. 126 Let me show you a memorandum which was apparently from you to Mr. Mitch Thomas and ask you if you recognize that.

A. Yes, sir.

Q. 127 Now, in the last sentence in the first paragraph appears the following: "These fines are being kept separate from the actual bottom ash so it will not contaminate the bottom ash for the dam raising."

A. Yes, sir.

Q. 128 So, then getting back to the purpose of the dam, that was the purpose of the dam, to prevent this contamination, wasn't it?

A. In that sense, yes, we were hoping to keep them separated, as well, but the main purpose--the bottom ash itself is the heavy stuff which we--like I was telling you previously, we raise our fly ash dam with. The fines mixing in with that would contaminate it to a degree, yes.

MR. MAY: Let us introduce this as Exhibit Number Five.

Q. 129 Now, the dam was built. Mr. Lequire began to move this stuff into this area. In the

building of the dam there, did you and Mr. Lequire have a discussion as to whether or not there needed to be an overflow pipe?

A. I don't recall that.

Q. 130 You don't recall Mr. Lequire saying he thought you needed an overflow pipe there?

A. To my knowledge, he may have confirmed that with our coal yard who built the dam, but--

Q. 131 Did you have any responsibility in the construction of that dam?

A. Physically, no.

Q. 132 Well, I mean in design?

A. No, sir.

Q. 133 Who would have been the one that designed the dam?

A. I have no idea.

Q. 134 You have no idea?

A. No, sir. I mean, I believe our coal yard used their--their loaders and dozers to make it, but--

Q. 135 Who directed them to make the dam?

A. There again, it was probably a joint effort between Mr. Lequire, myself and the coal yard superintendent.

Q. 136 Now, subsequent to the dam being placed there and Mr. Lequire beginning to pump material behind it, did the dam breach or break?

A. A small portion did; yes, sir.

Q. 137 Tell me about it.

A. One corner of the dam gave out.

Q. 138 And did that allow this material to come down?

A. A small portion of it; yes, sir.

Q. 139 As a matter of fact, it let a lot come down, didn't it?

A. I would not say a lot.

Q. 140 Okay. We've got a picture I'd like for you to look at here. Well, that's okay. Now, so a breach of whatever proportion occurred in the dam, allowing this material to come down into the lower portion of the pond. At that point, did someone open the valve and let this material run back into the settling pond?

A. At that time, I don't recall a valve being in the system.

Q. 141 You don't recall any of this material washing down into the settling pond?

A. Yes, sir, some did.

Q. 142 Okay. That's what I'm trying to get

at, Mr. Porter. In fact, quite a bit of it washed down into the settling ponds, didn't it?

A. I can't say that quite a bit. It was--best of my estimation, at one time when I--basically, after the fact, we gave him an extra work order to remove that where he counted the truckloads and we determined how much.

Q. 143 I want to show you a photograph and ask you if that's not a picture of the condition of the north pond after the dam breached or broke.

A. I couldn't tell you from this picture, sir. That could be any time, because I don't see the dam or anything in that picture.

Q. 144 So you don't know whether this is--

A. Not based on that picture, no, sir.

Q. 145 Would it normally be that you would see water standing there?

A. Only if that pond is in service.

Q. 146 But assuming this was the north pond that was in service, would there not have been normally water standing there?

A. If that pond was active, meaning we discharge our bottom ash to it, yes, there would be water there.

Q. 147 And wasn't the bottom ash being

discharged into the north pond at that time?

A. I could not tell you. I would not--I have no idea to know--no way to know.

Q. 148 You mean they used both the north and the south at the same time?

A. Not at the same time, no, sir.

Q. 149 And it's my understanding from Mr. England and Mr. Thomas's testimony that when you were using one, you would shut the other one down and be cleaning it out.

A. Yes, sir.

Q. 150 So it couldn't have happened that the north pond and the south pond were being used at the same time?

A. No, sir.

Q. 151 So--and if the north pond was being used, there should have been water standing there?

A. Yes, sir.

MR. MAY: Let us introduce this photograph as Exhibit Number Six.

Q. 152 So material did go down, then, into the settling ponds which included the heavy ash, didn't it?

A. Yes, sir, the best I recall.

Q. 153 Now, again, that added to Mr.